A RESOLUTION
BY FINANCE/EXECUTIVE COMMITTEE

A RESOLUTION AUTHORIZING THE CHIEF PROCUREMENT OFFICER TO UTILIZE GSA CONTRACT #GS-35F-0118J FOR THE PURCHASE OF THE VFA FACILITY SOFTWARE SYSTEM FROM VANDERWEIL FACILITY ADVISORS, INC. FOR THE CITY OF ATLANTA, DEPARTMENT OF AVIATION; IN AN AMOUNT NOT TO EXCEED $83,644.00. THE SOFTWARE PURCHASE WILL BE CHARGED TO AND PAID FROM FDOA 5501 (AIRPORT REVENUE FUND), DEPARTMENT 180107 (DEPARTMENT OF AVIATION, AVIATION INFORMATION SERVICES), EXPENDITURE 5212001 (CONSULTING/PROFESSIONAL SERVICES), FUNCTIONAL ACTIVITY 7563000 (AIRPORT), AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") Department of Aviation, desires to purchase the VFA Facility system from Vanderweil Facility Advisors, Inc. ("VFA") to use in Capital Planning and Management;

WHEREAS, pursuant to the City's Procurement and Real Estate Code of Ordinances §2-1606 the Chief Procurement Officer may procure supplies, services, and construction items through contracts established by the purchasing division of the State where such contracts and contractors substantially meet the requirements of this article; and

WHEREAS, the General Manager of the Department of Aviation and the Chief Procurement Officer recommend procuring VFA Facility system from Vanderweil Facility Advisors, Inc. ("VFA") for the Department of Aviation.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Chief Procurement Officer is authorized to execute a purchase order with Vanderweil Facility Advisors, Inc. for the purchase of The VFA Facility System in an amount not to exceed $83,644.00.

BE IT FURTHER RESOLVED, that all work will be paid from $83,644.00 5501 (Airport Revenue Fund), Department 180107 (Department of Aviation, Aviation Information Services), Expenditure 5212001 (Consulting/Professional Services), Functional Activity 7563000 (Airport).

BE IT FURTHER RESOLVED, that the Chief Procurement Officer is directed to prepare an appropriate purchase order.

BE IT FINALLY RESOLVED, that the purchase order will not become binding upon the City and the City will incur no liability until it has been approved by the Chief Procurement Officer and delivered to Vanderweil Facility Advisors, Inc.

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Contractor Information   (Vendors) How to change your company information

Contract #:	GS-35F-0118J	Socio-Economic : Small business
Contractor:	VFA, INC.	
Address:	266 SUMMER ST FL 6	Govt. Contracting Officer:
	BOSTON, MA 02210-1112	SANDRA J. BROOKS
Phone:	(617)772-8200	Phone: 703-605-2697
E-Mail:	jsummers@vfa.com	E-Mail: sandra.brooks@gsa.gov
Web Address:	http://www.vfa.com	

| Source	Title	Contract Number	Contract Terms & Conditions	Contract End Date	Category		View Items Available
70	GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND SERVICES	GS-35F-0118J	📄	Dec 7, 2013	132 33	COOP PURCH DISAST RECOV ARRA	GSA Advantage!
					132 34	COOP PURCH DISAST RECOV ARRA	GSA Advantage!
					132 51	COOP PURCH DISAST RECOV ARRA	GSA Advantage!
					132 52	DISAST RECOV ARRA	GSA Advantage!

Additional Contracts held by this contractor. To view more details of a contract, click the Contract Number below.

Source	Title	Contract Number	Contract Terms & Conditions	Contract End Date	Category		View Items Available
874	MISSION ORIENTED BUSINESS INTEGRATED SERVICES (MOBIS) - NOTE: Sch 69, TRAINING AIDS & DEVICES INSTRUCTOR-LED TRAINING; COURSE DEVELOPMENT; TEST ADMINISTRATION has been incorporated in SINS 4,5,8&9	GS-10F-0121P	📄	Dec 10, 2013	874 1	DISAST RECOV ARRA	GSA Advantage!
					874 3	DISAST RECOV ARRA	GSA Advantage!
					874 4	DISAST RECOV ARRA	GSA Advantage!

Proposal for Project

Asset Management Software

&

Related Training Services
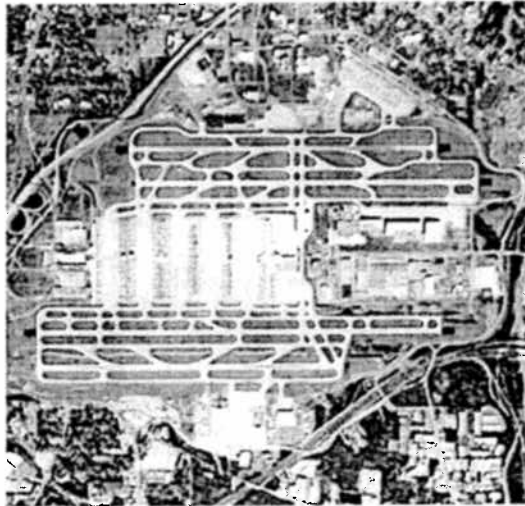
Hartsfield-Jackson
Atlanta International Airport

Response Date: April 29, 2009

Presented by:

Vanderweil Facility Advisors, Inc.
David Raffin
Vice President – State / Local Gov / EDU & Aiports
266 Summer Street
Boston, MA 02210
617-772-8132 (v)
617-772-8211 (f)
draffin@vfa.com

Capital Planning and Management Solutions

April 29, 2009

Hartsfield - Jackson Atlanta International Airport
Department of Aviation, Facilities Management Group
Hartsfield Atlanta International Airport
1255 Inner South Loop Road
Cottage Park, GA 30337
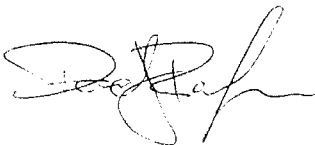USA

Attn: Mr. Jimmy Kelley

Dear Mr. Kelly;

VFA Inc. is please to present our proposal for Capital Planning and Management System (CPMS) software VFA.facility® and related training services. As requested we are providing a cost proposal and associated scope for the items listed in your request for proposal and identified below:

1. Cost for populating asset records with statistical models (not actual airport square footage loaded) by VFA for the Hartsfield-Jackson Atlanta International Airport
2. Pricing for three (3) named users
3. Pricing for one (1) report user
4. Pricing and projected available training dates for VFA..facility Regularly Scheduled Class, including training materials, in Boston for three (3) named users (excluding associated travel, lodging costs provided by DOA).
5. Pricing for "train the trainer" classes in Boston in conjunction with VFA.facility Regularly Scheduled Class training for two (2) named users

Please let me know if you have any questions. I can be reached directly at 617-772-8132 or by email at draffin@vfa.facility , I am here to help!! We look forward to working with Hartsfield – Jackson Atlanta International Airport in establishing your Capital Planning and Management solution.

Sincerely

David Raffin
Vice President
State/Local Government, Education & Airports

Cost Proposal

Item	Quantity	Unit Price	Extended Price
1. Cost for populating asset records with statistical models (not actual airport square footage loaded) by VFA for the Hartsfield-Jackson Atlanta International Airport	N/A	N/A	$49,909 Includes all expenses
2. Pricing for three (3) named users	3	$6,280	$18,840
3. Pricing for one (1) report user	1	$995	$995
4. Pricing and projected available training dates for VFA..facility Regularly Scheduled Class, including training materials, in Boston for three (3) named users (excluding associated travel, lodging costs provided by DOA). See description for VFA 101/201 software training.	3	$1,300	$3,900
*5. Pricing for "train the trainer" classes in Boston in conjunction with VFA.facility Regularly Scheduled Class training for two (2) named users	N/A	N/A	Please see note below on the Train the Trainer program

* Train the Trainer

Typically a train the trainer program is most cost effective for clients wishing to train one or two trainers to in turn train 100s of employees. VFA's recommendation would be to discuss whether or not a train the trainer approach is the most appropriate and cost effective method to meet Hartsfield Jackson Atlanta International Airport's (HJIA) goals, after the initial training above. This will provide HJAI an opportunity to develop a better understanding of how each VFA.facility modules could be best leveraged to meet their needs. We can set up a conference call for the week of May 4th to discuss the options and approach we recommend.

Project Methodology

Statistical Lifecycle Modeling

The purpose of the statistical lifecycle modeling is to establish order of magnitude estimates of future renewal needs based on anticipated performance of a facility and its major systems against industry standard models of degradation. While this analysis does not replace a full condition assessment for identifying actionable deferred maintenance issues, it can provide a sound initial estimation of the total deferred maintenance liability. Facilities personnel provide data on the building systems and their age and this information is fed into a computer model which produces the estimates.

Illustrating the Process

To efficiently develop as complete a facility/asset picture as possible, VFA has developed a process to quickly populate the client's database with facilities and site systems. The initial steps in the process involve developing a system library and gathering baseline asset information. This methodology will afford ATL with a sufficient amount of quality data required to estimate an order of magnitude for replacement items, benchmark the facilities condition, and accurately model the financial impact of future capital renewal costs.

Facility System Library

VFA has developed a library of facility systems using national standard resources and our own database derived from our experience. These facility systems are key components in determining standard lifecycles of facility systems, current replacement values, and capital renewal forecasting. VFA will review the systems in this library with ATL and adjust the costs based on previous project experience, local labor cost and availability factors. This information is key to determining the overall replacement value of the facilities, benchmarking the facilities relative physical condition, and determining capital renewal costs.

Base Facility Information

VFA will work with ATL personnel during configuration to develop the theoretical life and replacement costs for the various facility systems, using industry standards.

VFA uses the embedded systems library as well as confirming the following details:

- Facility size, year of construction/installation and in case of buildings, number of floors;
- Identify how many of each of the capital systems there are in the facility;
- Identify the approximate year of last replacement for those systems (defaults to the year of construction/installed); and,
- The data-entry of a location tag associated with the system name (e.g.: roof section A, or Boiler B1).

These few details, in combination with the assigned theoretical lives and replacement costs, result in a database populated with systems and life cycle projections. The database provides the baseline projections used to develop the first Facility (System Renewal) Condition Indices (FCI = *current capital renewal needs divided by asset replacement value*). This modeled data will act as the foundation for the future assessment work. In effect, assessment processes, guidelines and assistance that objectively determine and prioritize what facilities and systems

should be inspected first. A schedule that immediately defines what, when and why future condition assessment processes are required.

These processes give ATL total control of future assessments based on facility needs and funding appropriation

Project Steps

The following events and project schedule are proposed to complete the project for ATL:

1. The project will kick off with an onsite meeting with the VFA project team and the ATL team. The primary focus during the kick-off meeting will be to:
   - Review the data configuration necessary to manage ATL's facilities base. This will include an understanding the various assessment methodologies (statistical life cycle, visual life cycle and detailed condition assessment) and their advantages based on asset types.
   - Understand what data in existing ATL in-house systems may be re-used and corresponding systems associations. A close look will be taken at the asset categories and associated systems or attributes such as age, quantities, use, and type of, for each asset class.
   - Understand and identify gaps in data
   - Identify assets and associated systems and minimum required data which are to populate VFA.facility
   - Brief ATL Project Team on process components including:
     - Industry benchmarks (Facility Condition Index, System Condition Index)
     - What systems are normally modeled
     - How system replacement cost is derived
     - How system remaining lifetime is derived
     - Reporting and capital planning projections (statistical or visual)

   If through this process additional scope is required beyond statistical modeling VFA will submit a revised work plan and any associated fees to ATL. An example would be the project team mutually agrees that some visual assessments are conducted for verification of assets and systems of as a comparison between the different assessment methodologies available.

   Based on the results of the kick-off meeting the VFA team will document what configurations of the software system were agreed upon along with associated criteria for how the assets will be organized and categorized in the asset management database.

2. VFA will deploy a dedicated website for ATL. Access to the system will be granted to ATL on a read-only basis for authorized members of ATL to have visibility into the application as the project progresses. Upon completion of the statistical modeling for the all assets included in the database VFA will provide on-site training on the use of VFA.facility which is discussed later in this proposal.
   - VFA will leverage existing data templates for theoretical lives and replacement costs for particular facilities / assets / systems, supplementing with ATL data where necessary.
   - When possible existing electronic ATL data will be imported into the new system.

- ATL will review the facility configuration on-line and confirm details such as any user defined or configurable fields in VFA.facility for each major system present in these facilities. A simple form based data gathering tool will be used to capture data (only when needed) specific to ATL assets. For all airport facilities on-site Facilities Management personnel will be requested when deemed necessary to answer questions about the general state of facilities based on their experience.

- Armed with installation year, quantities, theoretic life and replacement value, VFA will model the database for ATL facilities included in project – producing a 5, 10, 25+ year overview of the capital required to sustain these facilities. Objective measures such as the Facility Condition Index as well as sophisticated funding / condition modeling tools will be available to ATL through VFA.facility.

- Based on the information entered in the system, VFA will analyze and model the rates of degradation of each asset or system and report upon the required reinvestment rate required on an annual basis to replace components as they reach the end of their useful life. Elements of the analysis include expected lifetimes of each asset or system, the cost to replace/refurbish that building system, and the ability to analyze multiple year outlooks and various combinations of building type reinvestment rates.

3. VFA will schedule presentation of findings meeting with ATL. This may be onsite or via Webex as needed. The purpose of the meeting is to review and discuss the value and utility of VFA's services and products as they relate to the mission of ATL. In addition, VFA will respond to any questions or issues that may have arisen from the entire process.

VFA 101/201 Software Training

VFA is in the process of updating the training schedule for the remainder of Q2 in our Boston Training facility. As soon as we have set the schedule we will forward it to ATL. We anticipate the schedule will be locked down the week of May 4th

Program Overview

Designed to provide basic understanding of the functionality of and concepts behind the entire standard VFA.facility software product through a hand-on approach Topics include Asset, Funding, Project, Reports, Import and Configure and Security Modules.

- Hand-on approach to learning provides participants with knowledge of concepts as well as practice of the mechanics.
- Concentrates on data entry/ management, as well as data analysis though reporting, ad hoc querying, project planning and creating funding scenarios.
- Refer to enclosed agenda for additional details.

Prerequisites

Participants should possess basic Internet and Microsoft Windows navigation skills, have previously used Microsoft Word and Excel or other similar programs, have an understanding of facility management and be familiar with the cost estimating concepts.

Classroom – Option 1

VFA 101/201 is offered in our Boston Training Center 266 Summer Street, Boston, MA 02210 at regularly scheduled intervals.

Standard ASP Agreement

APPLICATION SERVICE PROVIDER AGREEMENT

THIS APPLICATION SERVICE PROVIDER AGREEMENT (this "Agreement"), by and between Vanderweil Facility Advisors, Inc. ("VFA"), a Delaware corporation with offices at 266 Summer Street, Boston, MA 02210, and the entity whose name and address appear below (the "Company").

1. LICENSED APPLICATION AND SERVICES

1.1.   Services. Subject to the terms and conditions of this Agreement, VFA shall provide to the Company the following services (collectively, the "Services"):

(a)   In consultation with the Company, VFA shall use commercially reasonable efforts to implement the application set forth in Exhibit A (the "Licensed Application") for the Facility (as defined herein) in accordance with the specifications set forth in Exhibit A (the "Specifications") and in accordance with the schedule set forth set forth in Exhibit A;

(b)   VFA shall maintain the host server and provide remote access to the Licensed Application to the employees of the Company identified in Exhibit A (the "End Users") through the web site located at www.vfa.com (the "VFA Site"), or such other address as VFA may from time to time elect to use for such site;

(c)   VFA shall provide telephone, fax, and email support for the Licensed Application to the End Users. Such support shall be available Monday through Friday (excluding VFA designated holidays) from 9:00 a.m. – 5:00 p.m. (EST). The End Users shall first attempt to resolve any problem relating to the Licensed Application by referring to the documentation that VFA supplies to the Company for use with the Licensed Application (the "Documentation"). The End Users shall report to VFA any discrepancies between the Licensed Application and the Documentation or Specifications. VFA may, from time to time, implement new releases of the Licensed Application containing error and bug corrections, minor enhancements, and, in certain instances if VFA so elects, major enhancements. No support shall be available, and VFA shall not be liable, for: (i) problems, errors, or bugs resulting from configuration or faults in the Company's computer or network operating systems (e.g., NT, Windows, etc.) or any third party software;

(ii) hardware malfunctions, including cables, ports, printers, disk drives, etc.; or (iii) modifications made to the Licensed Application by a party other than VFA; and

(d)   If requested by the Company, VFA shall provide the training services described in Exhibit A for the fee described in Exhibit A.

1.2.   Acceptance. The Company agrees that it may reject the Licensed Application only if it does not substantially conform to the Documentation or Specifications. If the Company rejects the Licensed Application, VFA shall use commercially reasonable efforts to cause the Licensed Application to substantially conform to the Documentation and Specifications and shall resubmit the Licensed Application to the Company for testing in accordance with the foregoing procedure, which shall continue until the Licensed Application is actually or deemed accepted. Notwithstanding the foregoing, if VFA cannot after repeated attempts remedy any such nonconformance of the Licensed Application with the Documentation or Specifications, either party may terminate this Agreement upon written notice to the other, whereupon VFA shall return to the Company any amounts paid toward the License Fee (as defined herein).

1.3.   License; End Users. Subject to the terms and conditions of this Agreement, VFA hereby grants to the Company and the End Users during the Term and any Renewal Term (each as defined herein) a non-exclusive, non-transferable license to remotely access and use the Licensed Application through the VFA Site for the facility set forth in Exhibit A (the "Facility"). The foregoing license is limited to the Company's internal use, and the number of End Users set forth in Exhibit A (and any additional End Users added by the Company during the term of this Agreement pursuant to Section 3). Neither the Company nor any End User may: (a) disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Licensed Application or the VFA Site; (b) modify, adapt, create derivative

works based upon, or translate the Licensed Application or VFA Site; (c) resell, distribute, or otherwise grant any rights in Licensed Application or VFA Site to any third party, including commercial time-sharing, rental, or service bureau use; (d) access the Licensed Application or VFA Site other than in connection with the Company's internal use for the Facility, subject to the square foot limitation set forth above; or (e) publish or participate with any third party in any performance or benchmark tests or analysis relating to the Licensed Application or VFA Site. No third party applications, content, or contributions desired by the Company may be incorporated into the Licensed Application without VFA's prior approval and ongoing supervision.

1.4.   Passwords and IDs. The Licensed Application and the VFA Site are restricted and password protected. VFA shall issue unique logon IDs and passwords to each End User. Company acknowledges that logon IDs and passwords are Confidential Information of VFA. If Company discovers that any End User logon ID or password is compromised, Company shall notify VFA immediately. VFA reserves the right to cancel any logon ID or password for any reason.

2.   OTHER OBLIGATIONS

2.1.   Company Content. The Company hereby grants VFA during the Term and any Renewal Term a non-exclusive license to use the Company Content (as defined herein) for the purpose of fulfilling VFA's obligations hereunder. VFA reserves the right to remove or modify, as appropriate, any Company Content that, in VFA's reasonable discretion: (a) causes any technical difficulties or interference with the operations or intended functionality of the Licensed Application or the VFA Site; (b) violates any of VFA's then-current online terms of service or other policies; or (c) violates any applicable laws, rules, or regulations of any jurisdiction. "Company Content" means the text and other content that the Company provides to VFA for use in connection with the implementation of the Licensed Application.

2.2.   Compliance. In connection with the Company's access to and use of the Licensed Application and VFA Site, Company agrees to comply with all applicable international, federal, state, and local laws, rules, and regulations and applicable standards of professional conduct. The Company shall adhere and cause the End Users to adhere to the privacy policy and terms of service on the VFA Site. VFA reserves the right to amend such privacy policy and terms of service from time to time. Company shall work in good faith and cooperate with VFA in the event that any End User

violates the terms of this Agreement or the then applicable terms of service or privacy policy on the VFA Site, including without limitation taking reasonable steps to bar the End User from accessing the VFA Site and the Licensed Application.

2.3.   Developments. The Company agrees that it shall not directly or indirectly develop or have developed an application with functionality similar to that of the Licensed Application for a period of two (2) years after the expiration or termination of this Agreement.

2.4.   Company Representative. Company shall designate a person to act as Company's representative in connection with this Agreement (the "Company Representative"). The Company Representative shall have authority to transmit instructions, receive information, interpret, and define the Company's policies and decisions with respect to VFA's services under this Agreement. The Company Representative shall be responsible for providing VFA with any requested Company Content, Assessment Data (as defined herein), and any other data necessary or relevant to this Agreement. In the event VFA should need access to the Company's site or building in order to collect Assessment Data, Company Representative will arrange for VFA, its agents and representatives, to have safe access to the Company site and buildings thereon as required by VFA.

3.   LICENSE FEE; PAYMENT TERMS

3.1.   License fee. The company shall pay VFA the license fee set forth in exhibit a (the "license fee") upon execution of this agreement.

3.2.   Payment of invoices. Unless otherwise provided herein, all payments are due within thirty (30) days of the date of the applicable invoice. All fees are payable in advance of service. Overdue payments shall bear interest at the rate of one and one half percent per month (18 percent per annum) or the maximum rate of interest allowed by applicable law, whichever is less. Company will reimburse VFA for all costs and expenses of collection; including without limitation all court costs and reasonable attorneys' fees.

3.3   additional end users. The company may purchase licenses for additional end users to access and use the licensed application in increments of five (5) by paying VFA the then applicable license fee. Such licenses shall be subject to the terms and conditions of this agreement, shall run concurrently with the term of this agreement, and shall terminate upon the expiration or termination of this agreement. End user licenses may be transferred among

employees of the company only upon the prior written consent of VFA.

3.4 **Taxes.** The company shall be responsible for all sales taxes, use taxes, and any other taxes and charges of any kind imposed by any federal, state, or local governmental agency on the services or transactions contemplated by this agreement, excluding only taxes based solely upon VFA's income. When VFA has the legal obligation to pay or collect such taxes, the appropriate amount will be invoiced to and paid by the company, unless the company provides VFA with a valid tax exemption certificate authorized by the appropriate taxing authority.

4. Proprietary Rights

4.1 **Ownership.** Subject to the limited license granted to Company under this Agreement, VFA retains all rights, title and interests in and to the Licensed Application, Documentation, and VFA Site, including without limitation any updates or upgrades to any of the foregoing.

4.2 **Assessment Data; Anonymous Data; Company Content.** Company shall own all right, title, and interest in the Assessment Data (as defined herein) and the Company Data, and VFA shall own all right, title, and interest in any Anonymous Data (as defined herein). "Assessment Data" means the data the Company compiles in connection with capital planning assessments for the Facility that is used in connection with the Licensed Application. "Anonymous Data" means the Assessment Data and any other information that the Company or any End User provides to VFA in connection with this Agreement or the use of the Licensed Application after Company identifying and individual identifying information has been removed.

5. Confidentiality

5.1 **Confidential Information.** Each party acknowledges that it will have access to certain confidential information of the other party ("Confidential Information"), including without limitation the Licensed Application and Documentation. Each party agrees that: (a) it will hold the Confidential Information of the other party in confidence with at least the same degree of care as it uses for its own confidential information of the same nature, but not less than a reasonable degree of care; (b) it will not use the Confidential Information of the other party except as expressly permitted under this Agreement; and (c) unless if and to the extent required by law, it will not disclose any Confidential

Information of the other party to any third party, except that party's End Users, officers, directors, attorneys, accountants, and other advisors on a need to know basis. Each party's confidentiality obligations under this Agreement shall be binding upon any person to whom it discloses Confidential Information of the other party and any breach of such confidentiality obligations by any such person shall be deemed to be a breach of this Agreement. If a party or anyone to whom it transmits Confidential Information pursuant to the terms hereof becomes legally required to disclose any such information, such party shall provide the other party with prompt notice (prior to such disclosure) so that the other party may seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the disclosing party shall furnish only that portion of the Confidential Information that is legally required in the opinion of the disclosing party's counsel.

5.2 **Exceptions.** Notwithstanding the foregoing, neither party shall have any liability to the other with regard to information that: (i) was in the public domain at the time it was disclosed or thereafter enters the public domain without violation of this Agreement by the receiving party; or (ii) was at the time it was disclosed or thereafter becomes known to the receiving party from a third party other than one having an obligation of confidentiality to the disclosing party; or (iii) is independently developed by the receiving party. Further, subject to the Company's patent and copyrights, VFA shall be free to use in the performance of Services for others and in future products and services any ideas, concepts, techniques, or know-how related to software development or services related thereto.

5.3. **Injunctive Relief.** Each party acknowledges that any breach of its obligations under this Section 5 will cause the other party irreparable injury for which there are inadequate remedies at law. Accordingly, the non-breaching party will be entitled to injunctive relief in addition to all other remedies provided by this Agreement or available at law.

6. Warranties and Indemnification

6.1 **VFA Warranties and Representations.** VFA warrants and represents: (a) that, for a period of ninety (90) days from the date of Acceptance, the Licensed Application will substantially conform to the Documentation and Specifications; and (b) the Services will be performed in a professional and workmanlike manner. In the event of any breach of the foregoing warranties, VFA shall re-perform the Services and/use use its commercially reasonable efforts to cause the Licensed Application to

substantially conform to the Documentation and Specifications, as the case may be. The foregoing shall be the Company's exclusive remedies for any breach of warranty claim.

6.2   Disclaimer. VFA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. VFA does not warrant that the Licensed Application is error free or suitable for the Company's intended use.

6.3   VFA Indemnification.

(a)   VFA agrees to defend, indemnify, and hold the Company harmless from and against any claim by a third party that the Licensed Application infringes any United States patent, trade secret or copyright of that third party, provided: (i) VFA is promptly notified of the claim; (ii) VFA receives reasonable cooperation from the Company in protecting its rights related thereto; and (iii) VFA has the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise. VFA will not be responsible for any settlement it does not approve in writing.

(b)   The foregoing obligation of VFA does not apply with respect to the Licensed Application or portions or components thereof: (i) not supplied by VFA; (ii) used in a manner not expressly authorized by this Agreement (iii) made in whole or in part in accordance with the Company's specifications; (iv) modified by the Company, if the alleged infringement relates to such modification; (v) combined with other products (hardware or software), processes or materials where the alleged infringement would not exist but for such combination; or (vi) where the Company continues the allegedly infringing activity after being notified thereof and provided modifications that would have avoided the alleged infringement.

(c)   In the event the Licensed Application is held by a court of competent jurisdiction to constitute an infringement and use of the Licensed Application is enjoined, VFA shall, at its sole option, either: (i) procure for the Company the right to continue use of the Licensed Application; (ii) provide a modification to the Licensed Application so that its use becomes non-infringing; or (iii) replace the Licensed Application with software which is substantially similar in functionality and performance. If none of the foregoing alternatives is reasonably available to VFA, VFA shall refund a pro-

rata portion of the License Fee paid by the Company for the Term or Renewal Term during which the Company's use of the Licensed Application is enjoined. This Section 6.3 states VFA's sole liability and the Company's exclusive remedy for infringement claims.

6.4   Company Indemnification. Company agrees to defend, indemnify, and hold harmless VFA from and against all claims, damages, losses, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with any breach by the Company or any End User or other third party of Company's obligations under Section 5.

7.   LIMITATION OF LIABILITY; INJUNCTIVE RELIEF

Excluding liability for breach of a party's confidentiality obligations hereunder or the Company's breach of Section 1, neither party shall be liable to the other party or any third party for lost profits, cost of procurement substitute goods or services, or incidental, indirect, special, exemplary, consequential, punitive, or other similar damages, even if the party has been advised of the possibility of such damages. The foregoing limitations apply to all causes of action, including without limitation breach of contract or warranty, negligence, strict liability, misrepresentations, or other torts. VFA's aggregate liability for claims arising out of or relating to this Agreement shall not exceed $50,000.

8.   TERM OF AGREEMENT

8.1   Term; Automatic Renewal. The term of this Agreement shall commence on the Effective Date and continue for the period specified in Exhibit A (the "Term"). At least sixty (60) days prior to expiration of the Term, VFA shall send the Company a notice of renewal which shall include revised terms (the "Revised Terms"), if any, including the revised License Fee for the upcoming term (the "Renewal Notice"). In the event the Company does not accept the Revised Terms in the Renewal Notice and does not desire to renew the Agreement, the Company shall, at least thirty (30) days prior to the expiration of the Term provide VFA written notice of its intent not to renew this Agreement (a "Termination Notice"). If VFA does not receive a Termination Notice at least thirty (30) days prior to the expiration of the Term or any renewal term (each, a "Renewal Term"), this Agreement shall automatically renew and the Company shall be deemed to have accepted the applicable Revised Terms.

8.2   Events of Termination. Notwithstanding the foregoing, this Agreement may be terminated as follows: (a) immediately upon written notice by one

party to the other party if (i) the other party ceases to function as a going concern or to conduct operations in the normal course of business, or (ii) proceedings in bankruptcy or insolvency are instituted by or against the other party, or a receiver is appointed, or if any substantial part of the assets of the other party is the object of attachment, sequestration, or other type of comparable proceeding, and such proceeding is not vacated or terminated within thirty (30) days after its filing; (b) upon ten (10) days written notice by one party to the other party if the other party materially breaches of any term or condition of this Agreement and does not cure such breach within notice period; or (c) upon the mutual written consent of the parties.

8.3   Rights Upon Termination. Upon the expiration or termination of this Agreement for any reason, all licenses granted under this Agreement shall automatically terminate. Each party will return or destroy, at the other party's option, all copies of the other party's Confidential Information in its possession and shall immediately remove all links to the other party's web site. VFA shall terminate the End User passwords and logon IDs and access to the VFA Site.

9.   U.S. government restricted rights legend

If the Licensed Application is licensed by an agency or other part of the U.S. Government, the Licensed Application and accompanying written materials are provided with Restricted Rights and use, duplication or disclosure is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 48 C.F.R. 252.227-7013 or in subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at 48 C.F.R. 252.227(19), as applicable. The manufacturer is VFA located at the address set forth above.

10.   MISCELLANEOUS

10.1   This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts of law principles. Each party irrevocably consents to the jurisdiction of, and venue in, any federal or state court located in the Commonwealth of Massachusetts in connection with any dispute based on or arising out of or in connection with this Agreement.

10.2   VFA shall not be liable to the Company (or to any third party) for any delay or failure in performance of Services hereunder that is caused in whole or in part by reason of force majeure, which shall be deemed to include the occurrence of

any event beyond the control of VFA, the Company's failure to furnish necessary access to sites or facilities, information with respect to details of performance on the part of the Company, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot and other acts of civil disobedience, action of a public enemy, failure or delays in transportation, laws, regulations or acts of any national, state or local government (or any agency, subdivision or instrumentality thereof), judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, raw materials, machinery or technical failures. The Company shall not refuse acceptance by reason of delays occasioned by force majeure. Any delay resulting from force majeure shall correspondingly extend the time for performance by VFA.

10.3   No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any of the provisions of this Agreement shall be deemed a waiver of such provision on any other occasion, nor the waiver of any other provision, whether or not similar. No delay in the enforcement of any provision of this Agreement shall constitute a waiver of the right to enforce such provision in that or any other instance.

10.4   This Agreement shall bind the Company and VFA and their respective successors and assigns. The Company may not assign or transfer any interest in or rights under this Agreement without the written consent of VFA, and any attempted assignment of the foregoing shall be void and no effect.

10.5   This Agreement, including the exhibits referenced herein, represents the entire agreement between the Company and VFA and supersedes all prior negotiations, representations, and agreements, whether written or oral, and may be amended only by written instrument signed by both the Company and VFA.

10.6   Nothing contained in this Agreement shall be construed to grant rights or benefits to anyone other than the Company and VFA, or to create a contractual relationship with or a cause of action in favor of any third person against either the Company or VFA.

10.7   No action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the event(s) giving rise to the cause of action has occurred, except that an action for nonpayment may be brought within two (2) years of the date of last payment.

10.8   The relationship of the parties is that of independent contractors. Neither party shall be deemed to be the legal representative of the other. Each party agrees to assume complete responsibility for its own employees with regard to federal or state employers' liability and withholding tax, worker's compensation, social security, unemployment insurance, and Occupational Safety and Health Administration requirements and other federal, state, and local laws.

10.9   All provisions of this Agreement related to confidentiality, non-disclosure, proprietary rights, limitations of liability, non-solicitation, and the Company's payment obligations shall survive the expiration or termination of this Agreement for any reason.

10.10   If any of the provisions of this Agreement are declared to be invalid, such provisions shall be severed from this Agreement and the other provisions hereof shall remain in full force and effect.

10.11   All notices hereunder shall be in writing. All such notices may be given personally, by certified or registered mail, or by overnight courier using a delivery receipt of record. All such notices shall be deemed to be received as follows: (i) if delivered personally, when received; (ii) if mailed, three (3) days after being mailed; and (iii) if sent by overnight courier, when signed for. If to VFA, notices shall be sent to the address set forth above. If to the Company, notices shall be sent to the address set forth below.

10.12   Unless otherwise agreed in writing, for so long as this Agreement remains in effect and for a period of one (1) year after termination hereof, the Company shall not directly or indirectly solicit or hire as an employee or independent contractor a staff member of VFA or a former staff member of VFA that is or was involved with any Services.

10.13   The effective date (the "Effective Date") of this Agreement is _____.

Company:_____

Name: _____

Title: _____

Date: _____

Address:_____

_____

Vanderweil Facility Advisors, Inc.

By: _____

Name: _____

Title: _____ _____

Date: _____

Legislation Summary

Committee of Purview:

Caption

A resolution authorizing the Mayor to execute an appropriate contractual agreement on behalf of the Department of Aviation with Vanderweil Facility Advisors, Inc. ("VFA") in an amount not to exceed eighty three thousand six hundred forty four dollars and no cents ($83,644.00). All contract work shall be charged to and paid from fund account and center number: 5501 (Airport Revenue Fund), 180107 (Department of Aviation, Aviation Information Services), 5212001 (Consulting/Professional Services), 7563000 (Airport).

Council Meeting Date: December 07, 2009

Legislation Title: Resolution authorizing the Chief Procurement Officer to utilize the Federal GSA Contract #GS-35F-0118J with Vanderweil Facility Advisors, Inc. ("VFA") for the purchase of the VFA Facility Software System on behalf of the Department of Aviation in an amount not to exceed eighty three thousand six hundred forty four dollars and no cents ($83,644.00). All contract work shall be charged to and paid from fund account and center number: 5501 (Airport Revenue Fund), 180107 (Department of Aviation, Aviation Information Services), 5212001 (Consulting/Professional Services), 7563000 (Airport).

Requesting Department: Department of Aviation

Contract Type: N/A

Source Selection: Federal GSA Contract #GS-35F-0118J

Bids/Proposals Due: N/A

Invitations Issued: N/A

Number of Bids/ Proposals Received: N/A

Bidders/Proponents: N/A

Justification Statement:	N/A
Background:	N/A
Fund Account Centers:	5501 (Airport Revenue Fund), 180107 (Department of Aviation, Aviation Information Services), 5212001 (Consulting/Professional Services), 7563000 (Airport).
Source of Funds:	N/A
Fiscal Impact:	N/A
Term of Contract:	N/A
Method of Cost Recovery:	N/A

Approval:
  DOF:
  DOL:	

Prepared By:	Patricia Lowe, Buyer
Contact Number:	404.330.6583

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview:

Caption:

Council Meeting Date:

Requesting Dept.:

FAC Confirmed by:

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).
Currently Department of Aviation (DOA) does not have a central and comprehensive database system for its facility assets. DOA Facility managers have to manually assess each individual facility which has become a challenge to access, compile and distribute all that information on a regular basis. We currently store data in Excel sheets, pictures, AutoCAD drawings and other reports. However, these methods and software do not provide adequate capacity to hold all the information, produce prompt reports, data integrity and is not interactive. As a result information gathering and retrieval have been time consuming and in some cases outdated. A tool to effectively integrate facility planning, management systems, control methods, reviews, including financial controls and capital improvements will be better managed from VFA Facility Software.

2. Please provide background information regarding this legislation.
The VFA Facility software package will provide the facility managers, capital planners, financial analysts and executives with tools to manage and maintain data; integrate and control projects and facility processes. The benefits of this product will optimize decisions about facility spending, optimize maintenance resources. It will enable facility managers to formulate projects that minimize cost, time, redundancy and impact on ongoing activities, and combine such projects into multi-year-capital plans. Improve equipment and staff productivity. Provide continuous visibility to all plans and tasks all the way through the planning, design, construction and facility lifecycle while maintaining facility standards.

3. If Applicable/Known:

(a)   Contract Type (e.g. Professional Services, Construction Agreement, etc):

(b)   Source Selection:

235009-6

(c)   Bids/Proposals Due:

(d)   Invitations Issued:

(e)   Number of Bids:

(f)   Proposals Received:

(g)   Bidders/Proponents:

(h)   Term of Contract:

4. Fund Account Center (*Ex. Name and number*): $83,644.00-5501.180107.5212001.7563000

5. Source of Funds: *Example: Local Assistance Grant*

6. Fiscal Impact:

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery:

DOA can use VFA Facility Software to estimate the cost of capital asset renewal and replacement; ensure reliable cost projections for deferred maintenance and systems renewal. It enables facility managers to plan for repairs rather than address them on a costly, unscheduled basis or when the building/system is beyond repair.

This Legislative Request Form Was Prepared By: Tanita Toatong\Sharon Jones

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE   **ATTN: GREG PRIDGEON**

Dept.'s Legislative Liaison: _____Anita Williams_____

Contact Number: ___404-530-6600_____

Originating Department: _____Aviation_____

Committee(s) of Purview: ____Finance/Executive_____

Chief of Staff Deadline: _____11/17/09_____

Anticipated Committee Meeting Date(s): ____12/02/09_____

Anticipated Full Council Date: _____12/07/09_____

Commissioner Signature: _____

Chief Procurement Officer Signature: _____

CAPTION

A RESOLUTION AUTHORIZING THE CHIEF PROCUREMENT OFFICER TO UTILIZE GSA CONTRACT #GS-35F-0118J FOR THE PURCHASE OF THE VFA FACILITY SOFTWARE SYSTEM FROM VANDERWEIL FACILITY ADVISORS, INC. FOR THE CITY OF ATLANTA, DEPARTMENT OF AVIATION; IN AN AMOUNT NOT TO EXCEED $83,644.00. THE SOFTWARE PURCHASE WILL BE CHARGED TO AND PAID FROM FDOA 5501 (AIRPORT REVENUE FUND), DEPARTMENT 180107 (DEPARTMENT OF AVIATION, AVIATION INFORMATION SERVICES), EXPENDITURE 5212001 (CONSULTING/PROFESSIONAL SERVICES), FUNCTIONAL ACTIVITY 7563000 (AIRPORT), AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any) $83,644.00
Mayor's Staff Only

Received by CPO: _____   Received by LC from CPO:_____
           (date)   11/17/09   (date)

Received by Mayor's Office: _____   Reviewed by:_____
               (date)   (date)

Submitted to Council: _____
             (date)